

Governor's Work Group on Commercial Access to Government Electronic Records

MEETING ROLL UP

Wednesday, August 21, 1996, 1:00-4:30 PM

The official minutes of the Work Group's meetings are in the form of audio cassettes which are available through the DIS Communications Office. This summary is based on staff notes and is provided as a courtesy. This summary has not been approved or adopted by the group.

Summary of Public Comment to Date

Martin Munguia from the Governor's press office had appeared on two radio talk shows (KIRO News radio 710 and KOMO AM 1000) in the days following the Work Group's first meeting. He said there was perception that the state was looking to get into this business, that is, the commercial release of government records. As the talk shows progressed, it became clear to the hosts and callers that the Open Records Act already provides a mechanism for accessing records.

The summary of written comment to the Work Group is available under separate cover by contacting Eric Campbell via e-mail <ericc@dis.wa.gov> or phone <360/407-5282>.

Clarification and Discussion of Work Group Overview & Charter

A number of parties had requested clarification of two elements of the original overview. Based on the concerns expressed, references to "commercial purposes" were expanded to "commercial and business purposes." Further, the third paragraph of the introduction was deleted.

Copies of the Overview and Charter, as adopted by the Work Group, is available under separate cover by contacting Eric Campbell via e-mail <ericc@dis.wa.gov> or phone <360/407-5282>.

Round Table Discussion of Issues Related to Question 1

"How, and under what circumstances, should public records in electronic format be released for commercial purposes?"

- Work Group Charter, July 11, 1996

Steve Kolodney, Director, Department of Information Services, said the work group is "timely" judging from e-mail responses, talk shows, media coverage, and the Oregon DMV incident. Mr. Kolodney referred to a ComputerWeek story on a related subject. He also noted an advertisement by Public Technology Inc., which has published a book (and companion software) regarding pricing of government information -- or "enhanced data."

Mr. Kolodney also noted that the recent Oregon incident is a "case study on how the nature of records change once they become electronic." Kathy Baros-Friedt, Director, Department of Licensing, said the Washington State Department of Licensing had received many calls regarding the Oregon incident. In the days since the Oregon story broke, she said she had been told someone in

Oregon was setting up a "survey" database attempting to collect comments about DMV records access.

Todd Sander, Assistant Director, Department of Information Services, compared the "digital frontier" with the "Western frontier." He said that there is a historical analogy for what government faces in acting as steward of a public resource. Referring to the Mining Act and railroad expansion and with the advantages of hindsight, he said that these policies may have worked too well. He noted that Bruce Babbitt has had to abide by some of these old policies in some striking cases - citing two Arizona cases in which valuable mineral lands were sold for a pittance.

Mr. Sander said government information should be considered an asset, like natural resources. If government can charge for grazing rights, why not charge for access to data? It's a legitimate concern that future outrages over public stewardship could be the purchase of databases for pennies on the dollar of their real value.

Chip Holcomb, Senior Assistant Attorney General, Office of Attorney General carried Mr. Sander's analogy a further, asking what the EPA would be and where are the Parks? What exists or could exist to protect the public good?

Ms. Friedt asked: "...is this a resource that needs management? There is a need to answer this question consciously.... The challenge is how do we want to manage information as an asset".

Bruce Miyahara, Secretary, Department of Health said there are some old disasters from which we are still trying to recover from today. There is a public cost today resulting from what was originally thought to be a good idea. Law can have good intentions but an unforeseen cost later. Besides, whose information is it anyway? How did the information come into government control to be reallocated the way it was? Government has the information, but who does it belong to?

Nancy Zussy, State Librarian, said the Public Information Access Policy Task Force got the message loud and clear that taxpayers have paid for information once and don't want to do so again. She said the work group needs to make a clear distinction between "commercial" and "individual" use. The general public clearly feels it has paid for this information once and do not want to do so again.

Ms. Zussy noted that personal information is furnished to government for a specific purpose, to the exclusion of other purposes. This creates a trust factor that should be considered in developing policy for commercial release. Could information given by the public to government for one purpose be released for other purposes? She characterized the prevailing attitude toward the release of public records like this: "Most everybody wants to know everything about everybody else...but don't let others know about me! I gave you my personal information for these uses, but not for THAT use".

Mr. Kolodney opened a discussion of the first question that flows from the work group charter: "How, and under which circumstances, should public records in electronic format be released for commercial purposes?" He presented a set of questions developed by the group staff intended to extrapolate the subtleties from the first question. How do we define public records? What are public records? What is included in public records? What is excluded from public records? What context are we dealing with the issue of commercial use?

Ms Friedt stated that there is inherent confusion in the way people talk about public records. The statement that all government records are public records presumes that all records are discloseable. She said its a subtle, but important distinction.

Mr. Holcomb stated that statelaw contains no disincentivfor commercial use of state acquired information. Is it enough to say, “you cannot use the informationfor this,” or say “you must pay to use this?”

Mr. Miyahara said misuse ofpersonal datais equivalent to “high-tech assault. He thinks it may be more efficient to deal withabuse via sanctions on the back endrather than with bureaucracy on the front end

Mr. Kolodney reiterated that‘nobody’s interested in building a big new bureaucracy” to handle all this data. All agencies are underpressure for cost reduction and more efficient delivery of service which is being driven by technology and information. This same technology may impact individuals at the same time. Mr. Kolodney asked “How do we reach through to the second and third level use? According to Mr. Holcomb, theFederal Election Commissionhas allowed for “salting” a database to detect illegal use.

Carol Poole, Budget Assistant to the Governor, Office of Financial Management, presented a short paper on howother statesaddress these practices. First, she dealt with other state policies that made a distinction between the use and the user of the data. At the national level, the Federal Freedom of Information Act(FOIA) establishes three categories of users Commercial requester are required to pay an additional charge for search and review fees for public records. A recent survey by National Council ofState Legislators(NCSL) identified seven states thatexempted government developed software fromthe definition of “public record”, or have allowed agencies to copyright software developed with public funds. According to NCSL at least 20 states have statutory provisions to exempt software. In three other states, the Attorney General has issued rulings exempting software from public release. At least two statesINCLUDE software intheir definition of “public record.”

At least two states, Kentucky and North Carolina, specifically allow agencies to with hold software and Government Information Systems (GIS) from commercial requesters. Sral states havea combination of free/fee-based accesswith fees required for “enhanced” access to data (including Indiana and Nebraska).

Mr. Kolodney asked “What is the public benefit from commercial access to publicrecords?”

Lyle Quasim, Secretary, Department of Social and Health Services, stated that siting decisions for senior centers, for example, can be influenced by governmentinformation

Mr. Holcombstated that because there arenot substantial penalties for misuse, the definition of “commercial” has been narrowly defined by theAttorney General as “a profit-expectingactivity.” Mr. Holcomb recommends that if global policy is formulated by group, that criteria for determining access be “relatively simple”

Ms. Zussy suggested using technology itself to allow for different levels of access, using check-off boxes that give commercial entities permission to have access to my personal data.

Mr. Miyahara said that there must be careful accounting in the value added equation. The state must make sure that the "full" cost was reflected in what was charged, if anything to commercial entities who want information. Future costs are not always considered, nor are sunk costs associated with developing systems or maintaining databases. Since commercial entities are going to make a profit, those profits should be net of all costs.

Public Comment

Ron Sailer, small business owner of Automated Business Systems located in Marysville and Lynnwood. He discussed SB 5282, a Department of Revenue (DOR) bill, passed a couple years ago, and its effect on small business. He bought electronic records from DOR, repackaged them, and sold it to other business that needed small slices of the data base. The impact of SB5282 is that this information is no longer available to other areas of the community. DOR redefined its data base and excluded data that was "benign", such as a business name. He said businesses are perceived as "the bad guy" out to make millions off the backs of taxpayers. He said in his case and others, such an image does not fit the reality. He asked for the work group for its assistance in restoring a better business climate.

Larry Berg, a Seattle attorney, raised the question of "publishing." A photocopy isn't publishing, but copying information onto a disk is, so is putting something on the Internet. He said that submitting a document to the public record does not make it a part of the "public domain", especially from intellectual property standpoint. He warns against trying to construct unified "particle theory" of data access. He suggested that the way to go may be "intentionally piecemeal" instead of "haphazardly piecemeal." "Just because I may buy a share of GM stock does not mean I am entitled to just any information from GM." He said the state should view itself as a publisher. Indeed, The Electronic Court Record Steering Committee on which he serves, sees this as a matter that will have to be decided in the courts.

Glenn Jacobs, Executive Vice President of Commercial Information System (CIS) and Glenn Anderson, Washington State Business Consultant for CIS, addressed the work group. CIS is the largest provider of public records in Washington and Oregon. CIS is a third-party reseller of public information, much like TRW or Lexis-Nexis. CIS was responsible for the passage of HB 2790, which was vetoed by the Governor. CIS advocates identification of "permissible uses" and permitted users. Mr. Jacobs said that under current state, "commercial" means soliciting people for profit-making purposes. He said CIS clients have to verify representations made to them through applicants applying for loans or a job, own a car, a house, or have a clean driving record.

Mr. Anderson said the current present definition of commercial records may be outdated and not in line with its current use.

Ms. Friedt agreed that the definition of "commercial" seems to warrant a closer look.

Mr. Jacobs pointed out CIS would not be making money if it was not adding value to the acquired records.

Ted Hotham, representing RL Polk, Detroit, Michigan, which has maintained a national vehicle information database since 1922. This database is used in the support of automobile recalls and assist in identifying trends. The database is also helpful in identifying new locations for

businesses. Mr. Hotham stated that in most states there are restrictions placed on information either by the state or by Polk through a contract with the state. Using Oregon as an example, Polk could not have placed that information on the Internet because of self-imposed contractual limits. Mr. Hotham thinks the challenge of work group is to “determine the boundaries of the gray areas in regard to privacy and the needs of businesses to have access to the data held by government. An absence of good information to marketers will mean proliferation of “boxholder”-style junk mail. Mr. Hotham said Polk must be careful in its handling of sensitive information he has been very respectful of his source” of information “Misuse the information once and you will not get it again.”

Mr. Kolodney said that both CIS and RL Polk are welcome to a more in-depth examination of “value”--where it is, where it is added and by whom--at the work groups October meeting.

Mechanisms for Public Comment

It is the declared policy of the work group to obtain public input regarding these important issues. The public is invited to comment via:

E-Mail: **comment@dis.wa.gov**
via Web Site: **<http://www.wa.gov/dis/commaccess>**

Mail: **Governor’s Work Group**
P.O. Box 42445
Olympia, WA 98504

And the Work Group’s Public Meetings